

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of)	Case No. 06-N-13680-RAP
)	
STEVEN LEE WILSON,)	DECISION INCLUDING DISBARMENT
)	RECOMMENDATION AND
Member No. 102944,)	INVOLUNTARY INACTIVE
)	ENROLLMENT ORDER
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION

This matter was initiated by the Office of the Chief Trial Counsel of the State Bar of California (State Bar) alleging that respondent STEVEN LEE WILSON failed to comply with rule 955 of the California Rules of Court¹ as ordered by the Supreme Court. The State Bar was represented by Miho Murai. Respondent did not participate either in person or by counsel.

For the reasons stated below, it is recommended that respondent be disbarred.

II. SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed and properly served on respondent on October 13, 2006, by certified mail, return receipt requested, at the address shown on the official membership records of the State Bar (official address) and at an alternate address. (Bus. & Prof. Code §6002.1, subd. (c)²; Rules Proc. of State Bar, rules 60(b) and 583.) Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) Also, on October 20, 2006, copies of the NDC were served on respondent at his official and alternate addresses by first-class mail. All of this correspondence was returned as undeliverable.

¹Future references to rule are to this source. Rule 955 was renumbered as rule 9.20 effective January 1, 2007.

²All references to section are to this source.

On October 18, 2006, the State Bar Court properly served respondent by first-class mail, postage prepaid at his official address with a notice scheduling a status conference on November 13, 2006. The court judicially notices its records pursuant to Evidence Code section 452, subdivision (h) which indicate that this correspondence was returned as undeliverable. Respondent did not appear at the status conference. On November 15, 2006, an order memorializing the status conference was properly served on him at his official address. This correspondence was also returned as undeliverable.

Respondent did not file a response to the NDC. On November 15, 2006, the State Bar filed and properly served on respondent a motion for entry of default by certified mail, return receipt requested, at his official and alternate addresses. (Rules Proc. of State Bar, rule 200(a), (b).) The motion advised respondent that the State Bar would seek his disbarment if he was found culpable. (Rules Proc. of State Bar, rule 200(a)(3).)

Respondent did not respond to the default motion. Orders entering respondent's default and involuntarily enrolling him inactive were filed and properly served on him on December 5, 2006, by certified mail, return receipt requested at his official and alternate addresses. This document advised respondent, among other things, that he was enrolled inactive pursuant to section 6007, subdivision (e) effective three days after service of the order.

The State Bar's and the court's efforts to contact respondent were fruitless. The court concludes that respondent was given sufficient notice of the pendency of this proceeding, including notice by certified mail and by regular mail, to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (April 26, 2006, No. 04-1477) 547 U.S. ___, 126 S.Ct. 1708, 164 L.Ed.2d 415, <<http://www.supremecourtus.gov/opinions/05slipopinion.html>>.)

The case was submitted for decision on December 26, 2006.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court's findings are based on the allegations contained in the NDC as they are deemed admitted and no further proof is required to establish the truth of those allegations. (Section 6088; Rules Proc. of State Bar, rule 200(d)(1)(A).) The findings are also based upon matters admitted into evidence or judicially noticed.

A. Jurisdiction

Respondent was admitted to the practice of law in California on June 10, 1982 , and has been a member of the State Bar at all times since.

B. Facts

On February 10, 2006, the California Supreme Court filed an order, number S139317 (February 10 order), in State Bar Court case no. 05-H-1748 in which respondent was ordered, among other things, to be actually suspended for 60 days and until he complied with rule 205. If he was actually suspended for 90 days or more, he was also ordered to comply with rule 955(a) and (c) within 120 and 130 days, respectively, of the effective date of its order. The order was effective on March 12, 2006. (Rule 953(a).³) Accordingly, respondent was to comply with rule 955(c) no later than July 20, 2006.

The Supreme Court promptly sent respondent a copy of its order.⁴ A copy of it also was attached to the NDC in the instant proceeding.

On February 17, 2006, the State Bar's Probation Office wrote a letter to respondent reminding him of the obligation to comply with rule 955 which included a form for reporting compliance therewith and a copy of the February 10 order. The letter indicated that the rule 955(c) affidavit must be filed by July 30, 2006.⁵ It was sent by first-class mail, postage prepaid, to respondent's official address but was returned as undeliverable.

³This rule was renumbered as rule 9.18 effective January 1, 2007.

⁴Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order upon respondent, rule 8.532(a) of the California Rules of Court (formerly numbered as rule 29.4(a)) requires the Clerk to promptly transmit a copy of all opinions and orders to the parties upon filing. Moreover, it is presumed pursuant to Evidence Code section 664 that official duties have been regularly performed. (*In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Therefore, in the absence of evidence to the contrary, this court finds that the Clerk of the Supreme Court performed his duty and transmitted a copy of the Supreme Court's order to respondent promptly after its filing.

⁵The probation deputy's letter misinformed respondent about the deadline for filing the affidavit. It allowed him an additional 10 days to do so. This error is not significant as *no* rule 955(c) affidavit was filed on respondent's behalf.

As of July 30, 2006, respondent had not filed with the State Bar Court the affidavit required by rule 955(c). He still has not done so.⁶ He has offered no explanation for his noncompliance with rule 955(c).

On August 28, and September 8, 2006, the State Bar sent respondent letters to his official address by first-class mail, postage prepaid, indicating that an NDC would be filed if he did not respond to the correspondence. On September 25, 2006, the State Bar sent respondent a similar letter by first-class mail, postage prepaid, to what is believed to be his residence. The August 28 letter was returned as undeliverable. The others have not been returned.

C. Legal Conclusions

There is clear and convincing evidence that respondent wilfully violated the February 10 order directing his compliance with rule 955.⁷ Respondent was charged with a violation of section 6103 which makes it a cause for disbarment or suspension for an attorney to wilfully disobey or violate a court order requiring him or her to do or to forbear an act connected with or in the course of his or her profession, which he or she ought in good faith to do or forbear. By not filing the rule 955(c) affidavit, respondent did not comply with the Supreme Court's order in violation of section 6103.

IV. FINDINGS AND CONCLUSIONS AS TO AGGRAVATING CIRCUMSTANCES

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct⁸, std. 1.2(b).)

Respondent's prior discipline record is an aggravating circumstance. (Std. 1.2(b)(i).) As

⁶Pursuant to Evidence Code section 452, subdivision (d), the court judicially notices that its records still do not contain a rule 955(c) affidavit from respondent.

⁷Wilfulness in the context of rule 955 does not require actual knowledge of the provision which is violated. The Supreme Court has disbarred an attorney whose failure to keep his official address current prevented him from learning that he had been ordered to comply with rule 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

⁸Future references to standard or std. are to this source.

previously discussed, in order no. S139317, the Supreme Court imposed discipline consisting of one years' stayed suspension and actual suspension for 60 days and until he complied with rule 205, among other things. In that matter, respondent was found culpable of violating the conditions of a private reproof.

By order filed on September 7, 2004, respondent was privately reproofed with conditions for violating rule 3-700(A)(1) in one matter.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by not complying with rule 955(c) even after the NDC in the instant proceeding was filed. (Std.1.2(b)(v).)

Respondent's failure to participate in proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) He has demonstrated his contemptuous attitude toward disciplinary proceedings as well as his failure to comprehend the duty of an officer of the court to participate therein, a serious aggravating factor. (*In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 109-110.)

V. FINDINGS AND CONCLUSIONS AS TO MITIGATING CIRCUMSTANCES

Respondent did not participate in these proceedings or present any mitigating circumstances pursuant to standard 1.2(e). Since respondent bears the burden of establishing mitigation by clear and convincing evidence, the court has no basis for finding mitigating factors.

VI. LEVEL OF DISCIPLINE

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Respondent's wilful failure to comply with rule 955(c) is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116,131; rule 9.20(d) (formerly rule 955(d).) Disbarment has been consistently imposed by the Supreme Court as the sanction for noncompliance with rule 955. (*Bercovich v. State Bar, supra*, 50 Cal.3d at p. 131; *Lydon v. State Bar, supra*, 45 Cal.3d at p. 1188; *Powers v.*

State Bar, supra, 44 Cal.3d at p. 342.)

Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys although he has been given the opportunity to do so. He did not participate in this proceeding and did not comply with rule 955(c). More importantly, respondent's noncompliance with rule 955 undermines its prophylactic function in ensuring that all concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar, supra*, 45 Cal.3d at p. 1187.)

Respondent's disbarment is necessary to protect the public, the courts and the legal community, to maintain high professional standards and to preserve public confidence in the legal profession. It would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if respondent were not disbarred for his unexplained wilful disobedience of the Supreme Court's order.

VII. DISCIPLINE RECOMMENDATION

It is hereby recommended that respondent STEVEN LEE WILSON be disbarred from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this state.

It is also recommended that the Supreme Court order respondent to comply with rule 9.20(a) of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in the present proceeding, and to file the affidavit provided for in rule 9.20(c) within 40 days of the effective date of the order showing his compliance with said order.

VIII. COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

IX. ORDER REGARDING INACTIVE ENROLLMENT

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4). The inactive enrollment shall become effective three days from the date of service of this order and shall terminate upon the effective date of the

Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: March 15, 2007

RICHARD A. PLATEL
Judge of the State Bar Court